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**UNITED STATES DISTRICT JUDGE
ALAN A. McDONALD**

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON**

JERRY A. MELLAND, and
DARLENE J. MELLAND, husband
and wife,
Plaintiffs,

vs.

FLUOR DANIEL HANFORD, INC.,
and HANFORD ATOMIC METAL
TRADES COUNCIL,
INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL
UNION NO. 280, A.F. of L., C.I.O.
Defendants

Case No.: CT-99-5038-AAM

**DEFENDANT FLUOR DANIEL
HANFORD, INC.'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFFS' COMPLAINT FOR
DAMAGES**

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AUG 16 1999

JAMES R. LARSEN, CLERK
YAKIMA, WASHINGTON DEPUTY

Defendant FLUOR DANIEL HANFORD, INC. ("Fluor Daniel") hereby denies, admits, answers
and alleges as follows:

ANSWER

I. JURISDICTION

1. Fluor Daniel admits that this Court may exercise jurisdiction on the grounds stated in Paragraph 1.
2. Fluor Daniel admits that this Court may exercise supplemental jurisdiction over pendent state law claims.
3. Fluor Daniel denies the amount in controversy exceeds \$50,000.

**DEFENDANT FLUOR DANIEL HANFORD, INC.'S - 1 -
ANSWER AND AFFIRMATIVE DEFENSES**

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ORIGINAL

II. DEMAND FOR JURY TRIAL

1 4. Plaintiffs' request and demand for a jury does not require a response. Defendants reserve the
2 right to make objections to a trial by jury in this action.
3

III. PARTIES

4
5 5. Fluor Daniel admits that Plaintiff Jerry A. Melland was in the employ of Defendant Fluor
6 Daniel. Fluor Daniel lacks sufficient knowledge to admit and therefore denies the remaining
7 allegations in Paragraph 5 of the Complaint.
8

9 6. Fluor Daniel admits.
10

11 7. Fluor Daniel admits.
12

13 8. The allegations made in Paragraph 8 of the Complaint state legal conclusions to which no
14 response is necessary. Therefore, they are denied.

IV. FACTS

15
16 9. Fluor Daniel lacks sufficient knowledge to admit and therefore denies the allegations in
17 Paragraph 9 of the Complaint.
18

19 10. Fluor Daniel admits that Plaintiff Jerry A. Melland was an employee of Defendant Fluor
20 Daniel until his employment was terminated.
21

22 11. Fluor Daniel admits that on or about August 7, 1997, it entered into a Labor Agreement
23 ("CBA") with Hanford Atomic Metal Trades Council ("HAMTC"). The language in the CBA
24 set forth in Paragraph 11 speaks for itself and does not require a response.
25

12. The language in the CBA set forth in Paragraph 12 speaks for itself and does not require a response.

13. The language in the CBA set forth in Paragraph 13 speaks for itself and does not require a response.

14. The language in the CBA set forth in Paragraph 14 speaks for itself and does not require a response.

15. The language in the CBA set forth in Paragraph 15 speaks for itself and does not require a response.

16. The language in the CBA set forth in Paragraph 16 speaks for itself and does not require a response.

17. Fluor Daniel denies the allegations made in Paragraph 17 of the Complaint.

18. Fluor Daniel admits that Plaintiff Jerry A. Melland operated a motorized street sweeper during the course of his employment with Defendant Fluor Daniel. Fluor Daniel denies the remaining allegations made in Paragraph 18 of the Complaint.

19. Fluor Daniel denies the allegations made in Paragraph 19 of the Complaint.

20. Fluor Daniel admits that Plaintiff Jerry A. Melland failed to exercise control over the street sweeper and the street sweeper struck another vehicle. Fluor Daniel denies the brakes were defective and likewise denies the remaining allegations made in Paragraph 20 of the Complaint.

21. Fluor Daniel admits that on or about March 25, 1998, Plaintiff Jerry A. Melland was discharged as an employee of Defendant Fluor Daniel because he had failed to report the accident.

1 22. Fluor Daniel admits that Plaintiff Jerry A. Melland filed a grievance. Fluor Daniel lacks
2 sufficient knowledge to admit and therefore denies the remaining allegations in Paragraph 22 of the
3 Complaint.

4 23. The language in the CBA regarding the grievance process as set forth in Paragraph 23 of the
5 Complaint speaks for itself and does not require a response. In addition, the allegations made in
6 Paragraph 23 of the Complaint state legal conclusions to which no response is necessary.
7 Therefore, they are denied.

8 24. Fluor Daniel lacks sufficient knowledge to admit and therefore denies the allegations in
9 Paragraph 24 of the Complaint.

10 25. Fluor Daniel admits that at each step of the grievance process, it reasonably determined and
11 believed that Plaintiff's termination for failing to report his accident constituted just cause for
12 termination under the CBA and, therefore, Fluor Daniel refused to reinstate the Plaintiff.

13 26. Fluor Daniel lacks sufficient knowledge to admit and therefore denies the allegations in
14 Paragraph 26 of the Complaint.

15 27. Fluor Daniel lacks sufficient knowledge to admit and therefore denies the allegations in
16 Paragraph 27 of the Complaint.

17 28. Fluor Daniel lacks sufficient knowledge to admit and therefore denies the allegations in
18 Paragraph 28 of the Complaint.

19 29. The allegations made in Paragraph 29 of the Complaint state legal conclusions to which no
20 response is necessary. Therefore, they are denied.
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22
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V. FIRST CAUSE OF ACTION—BREACH OF EMPLOYMENT CONTRACT

1 30. Defendant Fluor Daniel incorporates by reference and realleges its answers made in
2 Paragraphs 1 through 29 of the Answer.

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4 31. The allegations made in Paragraph 31 of the Complaint state legal conclusions to which no
5 response is necessary. Therefore, they are denied.

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7 32. Fluor Daniel denies the allegations made in Paragraph 32 of the Complaint.

8
9 33. Fluor Daniel denies the allegations made in Paragraph 33 of the Complaint.

10 34. Fluor Daniel denies the allegations made in Paragraph 34 of the Complaint.

11 35. Fluor Daniel denies the allegations made in Paragraph 35 of the Complaint.

12
13 36. Fluor Daniel denies the allegations made in Paragraph 36 of the Complaint.

14 37. Fluor Daniel denies the allegations made in Paragraph 37 of the Complaint.

15
16 **VI. SECOND CAUSE OF ACTION—SAFE WORKING ENVIRONMENT**

17 38. Defendant Fluor Daniel incorporates by reference and realleges its answers made in
18 Paragraphs 1 through 37 of the Answer.

19
20 39. The allegations made in Paragraph 39 of the Complaint state legal conclusions to which no
21 response is necessary. Therefore, they are denied.

22
23 40. Fluor Daniel denies the allegations made in Paragraph 40 of the Complaint.

24 41. Fluor Daniel denies the allegations made in Paragraph 41 of the Complaint.
25

VII. THIRD CAUSE OF ACTION—PROGRESSIVE DISCIPLINE

42. Defendant Fluor Daniel incorporates by reference and realleges its answers made in Paragraphs 1 through 41 of the Answer.

43. The allegations made in Paragraph 43 of the Complaint state legal conclusions to which no response is necessary. Therefore, they are denied.

44. Fluor Daniel denies the allegations made in Paragraph 44 of the Complaint.

45. Fluor Daniel denies the allegations made in Paragraph 45 of the Complaint.

VIII. FOURTH CAUSE OF ACTION—FAIR DEALING AND GOOD FAITH

46. Defendant Fluor Daniel incorporates by reference and realleges its answers made in Paragraphs 1 through 45 of the Answer.

47. The allegations made in Paragraph 47 of the Complaint state legal conclusions to which no response is necessary. Therefore, they are denied.

48. Fluor Daniel denies the allegations made in Paragraph 48 of the Complaint.

49. Fluor Daniel denies the allegations made in Paragraph 49 of the Complaint.

IX. FIFTH CAUSE OF ACTION—AGE DISCRIMINATION

50. Defendant Fluor Daniel incorporates by reference and realleges its answers made in Paragraphs 1 through 49 of the Answer.

51. Fluor Daniel denies that it discharged Plaintiff because of his age and denies the allegations made in Paragraph 51 of the Complaint.

52. Fluor Daniel denies the allegations made in Paragraph 52 of the Complaint.

53. Fluor Daniel denies the allegations made in Paragraph 53 of the Complaint.

54. Fluor Daniel denies the allegations made in Paragraph 54 of the Complaint.

55. Fluor Daniel denies the allegations made in Paragraph 55 of the Complaint.

56. Fluor Daniel denies the allegations made in Paragraph 56 of the Complaint.

X. SIXTH CAUSE OF ACTION—FAIR REPRESENTATION

57. Defendant Fluor Daniel incorporates by reference and realleges its answers made in Paragraphs 1 through 56 of the Answer.

58. The allegations made in Paragraph 58 of the Complaint state legal conclusions to which no response is necessary. Therefore, they are denied.

59. The allegations made in Paragraph 59 of the Complaint state legal conclusions to which no response is necessary. Therefore, they are denied.

60. Fluor Daniel lacks sufficient knowledge to admit and therefore denies the allegations in Paragraph 60 of the Complaint.

61. Fluor Daniel lacks sufficient knowledge to admit and therefore denies the allegations in Paragraph 61 of the Complaint.

62. Fluor Daniel admits that Plaintiff's grievance was not pursued further under the CBA grievance and arbitration process. Fluor Daniel denies the remaining allegations made in Paragraph 62 of the Complaint.

1 63. The allegations made in Paragraph 63 of the Complaint state legal conclusions to which no
2 response is necessary. Therefore, they are denied.

3 64. The allegations made in Paragraph 64 of the Complaint state legal conclusions to which no
4 response is necessary. Therefore, they are denied.

5 65. The allegations made in Paragraph 65 of the Complaint state legal conclusions to which no
6 response is necessary. Therefore, they are denied.

7
8 66. The allegations made in Paragraph 66 of the Complaint state legal conclusions to which no
9 response is necessary. Therefore, they are denied.

10 67. The allegations made in Paragraph 67 of the Complaint state legal conclusions to which no
11 response is necessary. Therefore, they are denied.

12
13 68. Fluor Daniel denies the allegations made in Paragraph 68 of the Complaint.

14
15 69. Fluor Daniel denies the allegations made in Paragraph 69 of the Complaint.

16 **XI. SEVENTH CAUSE OF ACTION—CONTRACT: SAFE WORK ENVIRONMENT**

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18 70. Defendant Fluor Daniel incorporates by reference and realleges its answers made in
19 Paragraphs 1 through 69 of the Answer.

20 71. The allegations made in Paragraph 71 of the Complaint state legal conclusions to which no
21 response is necessary. Therefore, they are denied.

22
23 72. Fluor Daniel denies the allegations made in Paragraph 72 of the Complaint.

XII. DAMAGES

1 73. Defendant Fluor Daniel incorporates by reference and realleges its answers made in
2 Paragraphs 1 through 72 of the Answer.
3

4 74. Fluor Daniel denies the allegations made in Paragraph 74 of the Complaint.
5

6 75. Fluor Daniel denies the allegations made in Paragraph 75 of the Complaint.
7

8 76. Fluor Daniel denies the allegations made in Paragraph 76 of the Complaint.
9

10 77. Fluor Daniel denies the allegations made in Paragraph 77 of the Complaint.
11

12 Defendant Fluor Daniel denies Plaintiffs' prayer for relief, both specifically and
13 generally, and asserts that Plaintiffs are not entitled to any relief whatsoever.
14

AFFIRMATIVE DEFENSES

15 1. Plaintiffs fail to state a claim upon which relief may be granted.
16

17 2. Plaintiffs have failed to mitigate their damages, if any were sustained.
18

19 3. Plaintiffs' state law claims are preempted by Section 301 of the Labor Management Relations
20 Act 29 U.S.C. § 185 ("LMRA").
21

22 4. Plaintiffs' state law claims are preempted by Sections 7 and 8 of the National Labor Relations
23 Act, 29 U.S.C. §§ 157, 158 ("NLRA").
24

25 5. Plaintiff Jerry A. Melland failed to exhaust his administrative remedies.
26

27 6. Plaintiff Jerry A. Melland has failed to exhaust his remedies available under the HAMTC
28 Labor Agreement.
29

1 7. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitation,
2 including without limit, the 6-month period of limitations set forth by Section 301 of the Labor
3 Management Relations Act ("LMRA"), 29 U.S.C. § 185, and federal regulations related to
4 administrative proceedings brought before federal agencies, including, without limit, the United
5 States Departments of Labor and Energy.

6 8. Defendant Fluor Daniel terminated Plaintiff Jerry A. Melland for just cause.

7 9. Plaintiffs' claims are barred by the doctrine of estoppel.

8
9 10. Any adverse employment decision made against Plaintiff was based on legitimate,
10 nondiscriminatory reasons, and complied with Defendant Fluor Daniel's company policies,
11 applicable collective bargaining agreements, federal contracts, and applicable statutes, regulations
12 and orders.

13
14 11. At all times material to this action, Defendant Fluor Daniel acted toward Plaintiff in good faith,
15 consistent with Defendant Fluor Daniel's company policies, applicable collective bargaining
16 agreements, federal contracts, and applicable statutes, regulations and orders.

17
18 12. Plaintiffs' claims for pain and suffering, depression and other compensatory damages alleged
19 under the common law are barred to the extent they fall under the "exclusivity" provisions of the
20 State of Washington Industrial Insurance Act or Worker Compensation statute.

21 13. Plaintiffs' breach of contract claims are barred by waiver and/or disclaimer.

22
23 14. If Plaintiffs sustained any damages, they resulted, in whole or in part, from Plaintiffs' own acts
24 or omissions.
25

15. If Plaintiffs sustained any damages, they resulted, in whole or in part, from the fault of a non-party or non-parties.

16. Plaintiffs' delays in commencing this action have caused prejudice to Defendants. Therefore, Plaintiffs' claims are barred by the equitable doctrine of laches.

17. Plaintiffs' claims are barred by the equitable doctrine of unclean hands.

XIII. REQUEST FOR RELIEF

Defendant Fluor Daniel requests that the Court grant the following relief:

1. Plaintiffs recover nothing and the Court renders judgment for Defendants on each and every claim.
2. Defendant Fluor Daniel recovers its reasonable attorneys' fees and costs of litigation pursuant to applicable statutes, civil rules or equitable grounds.
3. The Court grants Defendant Fluor Daniel whatever other relief the Court determines is equitable and just.

DATED THIS 3rd DAY OF AUGUST 1999.

HALVORSON & SAUNDERS, P.L.L.C.

BY: 

LARRY E. HALVORSON

WSBA No. 7356

MICHAEL B. SAUNDERS

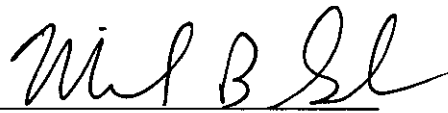
WSBA No. 22230

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing DEFENDANT
FLUOR DANIEL's ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS'
COMPLAINT FOR DAMAGES was duly served by First Class Mail on AUGUST 13 1999 to:

John A. Bardelli
Attorney at Law
606 N. Pines Rd.
Suite 201
Spokane, WA 99206


Michael B. Saunders